Before the
Federal Communication Commission
Washington, D. C. 20554

In the Matter of Lifeline and Link-up	))	WC Docket No. 03-109
In the Matter of Sprint Spectrum, L.P. Petition for Declaratory Ruling	)))	WC Docket No. 07-138

COMMENTS

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CORPORATION COMMISSION OF THE STATE OF KANSAS

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1. On June 8, 2007, Sprint Spectrum, L.P. (Sprint) filed its Petition for Declaratory Ruling with the Federal Communications Commission (FCC). Sprint is seeking a ruling from the FCC finding that the October 2, 2006 decision[1] by the Corporation Commission of the State of Kansas (KCC) in Docket No. 06-GIMT-446-GIT violates 47 U.S.C. § 254(f), 47 U.S.C. § 332(c)(3)(A), and 47 C.F.R. § 54.403(b). On July 10, 2007, the FCC released a

[1] *In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier (rel. Oct. 2, 2006) (October 2006 Order) (Attachment 1 of Sprint's Petition).

Public Notice establishing a pleading cycle for comments on Sprint's Petition. The KCC, in accordance with the Public Notice, provides these Comments on Sprint's Petition for Declaratory Ruling.

Background

2. In October 2005, the KCC opened Docket No. 06-GIMT-446-GIT to establish clear criteria for eligible telecommunications carrier (ETC) designation. The KCC raised several issues and asked the parties to discuss those issues in comments and reply comments. Several parties to the docket commented on the issues. After careful consideration, the Commission issued its October 2006 Order. The portion of that Order relevant to Sprint's Petition required ETCs to apply the Lifeline discount to the service plan a qualifying Lifeline customer chooses. The KCC ordered the following:

> ETCs are required to allow Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the customers. Any ETC that does not allow customer selection at this time must do so within 180 days of the date of this Order.[2]

While Sprint did not directly address Lifeline customer choice in its comments or reply comments, Sprint and ALLTEL Kansas Limited Partnership (Alltel), filed Petitions for Reconsideration of the KCC's October 2006 Order raising this issue. On November 20, 2006, the KCC issued its

[2] October 2006 Order, ¶ 77e.

Order Addressing Petitions for Reconsideration. In denying reconsideration, the KCC stated the following:

> The [KCC] will not reconsider its order directing ETCs to allow Lifeline customers to select which plan to apply the Lifeline discount. The [KCC] believes it is in the public interest to ensure that Lifeline customers are not limited to one plan. The [KCC] notes that other carriers participating in this docket do provide a choice of plans to Lifeline customers. Finally, even if Sprint and Alltel's interpretation of 47 C.F.R. § 54.403(b) has merit, neither have provided the [KCC] with authority stating that this Commission cannot expand the application of the Lifeline discount to plans other than the lowest cost plan provided by an ETC. Likewise, Sprint and Alltel have not demonstrated that they are harmed in any way by giving their low-income customers more choice among the services they are offering as ETCs.[3]

3. On March 23, 2007, just a few days before the deadline for Sprint to offer its qualifying Lifeline customers a choice of plans in Kansas, Sprint filed its Verified Complaint for Declaratory and Injunctive Relief, and Motion for Temporary Restraining Order And/Or Preliminary Injunction in the United States District Court for the District of Kansas (the Court). A hearing was held on the Temporary Restraining Order And/Or Preliminary Injunction on March 27, 2007. Sprint clarified that it was only seeking a temporary restraining order at the time of the hearing.

[3] *In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, Docket No. 06-GIMT-446-GIT, Order Addressing Petitions for Reconsideration, ¶ 47 (rel. November 20, 2006)(Attachment 4 of Sprint's Petition).

4. On April 6, 2007, the Court issued its Order denying Sprint's Motion.[4]

5. On April 16, 2007, contemporaneous with its Answer to Sprint's Complaint, the KCC filed its Motion to Dismiss or in the Alternative to Defer to the Federal Communications Commission. The KCC, among other arguments, argued that under the doctrine of primary jurisdiction, the issues raised by Sprint should be addressed by the FCC.

6. On May 8, 2007, the Court, by agreement of the parties, referred the matter to the FCC.

7. In its Petition for Declaratory Ruling, Sprint argues that the KCC's rule allowing Lifeline customers a choice of plans violates 47 C.F.R. § 54.403(b), is inconsistent with 47 U.S.C. § 254(f), and is an impermissible rate regulation in violation of 47 U.S.C. § 332(c)(3)(A).

8. As stated below, the KCC's Lifeline Rule does not violate federal rules or statutes, is a proper exercise of its authority to establish ETC criteria, and is consistent with the goals of providing universal service.

The KCC's Lifeline Rule is Consistent with 47 U.S.C. § 254(f) and 47 C.F.R. § 54.403(b)

9. Central to Sprint's argument that the KCC's Lifeline Rule is inconsistent with the FCC's rules is Sprint's narrow reading of 47 C.F.R. § 54.403(b). That rule reads as follows:

[4] *Sprint Spectrum, L.P. v. Brian Moline, et al.*, Order, Case No. 07-2130-KHV (D. Kan.) (Apr. 4, 2007) (Included here as KCC Attachment 1).

> Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line Charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. <u>Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in Section 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.</u>[5]

Sprint argues that the rule requires support to be applied only to the lowest-cost tariffed plan, or in the case of a carrier without tariffed rates, to the lowest-cost generally available plan. The KCC, on the other hand, reads the rule as requiring Lifeline support to be applied to the lowest tariffed <u>or otherwise generally available</u> rate plan. This less limited view of the rule is not only consistent with the language of the rule, but also with the FCC's Lifeline policies. The FCC has allowed carriers to apply the Lifeline discount to plans other than their lowest-cost plan.[6] In the Lifeline and Link-Up Order, the FCC refused to adopt rules that would prohibit carriers from offering vertical services, such as Call Waiting and Caller ID, to qualifying Lifeline customers. The FCC stated that restricting a customer's ability to

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[5] 47 C.F.R. § 54.403(b) (emphasis added)

[6] See, *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, ¶ 53 (rel. Apr. 29, 2004)(Lifeline and Link-Up Order).

purchase vertical services could act to limit the number of qualifying customers that enroll in the Lifeline program.[7] If the intent of Section 54.403(b) is to restrict Lifeline customers to only the lowest-cost plan, the FCC would not have allowed carriers to market services beyond those available in such plans.

10. The KCC's Lifeline Rule follows the FCC's rational by increasing the likelihood that qualifying customers will enroll in Lifeline by providing more choice than only the lowest-cost plan. Sprint's interpretation of the rule would limit a Lifeline customer to a basic plan with a limited number of minutes. Under Sprint's interpretation, the limiting factor is cost. Therefore a carrier is required to only make available the lowest-cost plan, regardless of how limited that basic service plan is. Application of Sprint's narrow interpretation of 54.403(b) would discourage enrollment in the Lifeline program, contrary to the FCC's Lifeline policies.

11. In the Order adopting 47 C.F.R. § 54.403(b), the FCC stated the "program currently reduces end-user charges that low-income consumers in participating jurisdictions pay for some <u>state-specified level of local service</u> that includes access to the PSTN and some local calling."[8] Therefore, the states have authority to develop Lifeline Rules that are consistent with the requirement to provide access and some level of local usage. The KCC's Lifeline Rule is consistent with these requirements.

[7] Lifeline and Link-Up Order, ¶ 53.
[8] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 341 (rel. May 8, 1997) (emphasis added).

12. States have authority to adopt regulations relating to universal service, including Lifeline in addition to those promulgated by the FCC, as long as those regulations are not inconsistent with the FCC's rules. 47 U.S.C. § 254(f). The FCC has recently interpreted its rules to permit states to determine the level of "local usage" carriers must provide in order to qualify for universal service support. The FCC adopted a list of basic services that carriers must provide to be designated ETCs, but declined to impose any specific local usage threshold.[9] Instead, the FCC required competitive ETCs like Sprint, to provide a usage plan comparable to the incumbent wireline carrier's plan.[10] In order to meet this comparability requirement, a range of options are available to carriers such as calling plans with varying minutes of use, or even unlimited local minutes bundled with long distance minutes.[11] It follows from this discussion that State Commissions not only have discretion to require wireless ETCs to provide Lifeline subscribers with access to calling plans that are comparable to wireline local service offerings, but have an obligation to do so. Therefore, states should have discretion to allow Lifeline subscribers to choose plans with varying minutes of use, particularly when the lowest-cost plan might not provide a qualifying customer with the level of local usage comparable to a wireline carrier. The KCC's Lifeline Rule, allowing a choice of plans, will allow qualifying customers to avoid service

[9] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46, ¶ 32 (rel. Mar. 17, 2005) (ETC Order).
[10] ETC Order, ¶ 32.
[11] ETC Order, ¶ 33.

interruption or costly overage charges, which occur when their level of local usage exceeds the minutes provided in the basic plan.

13. Sprint argued in its Petition that under the KCC's Lifeline Rule, a Lifeline customer could select a service plan costing $149.99 or more. Sprint provides no evidence that qualifying customers would select such an expensive plan. It is much more likely that a customer would select a plan that is affordable, but allows uninterrupted use of the telephone without expensive overage charges. The KCC's Lifeline Rule ensures that in making such a selection, a customer can continue to be enrolled in the Lifeline program.

The KCC's Lifeline Rule Does Not Violate 47 U.S.C. § 332(c)(3)(A).

14. Sprint argues that the KCC's Lifeline Rule is impermissible rate regulation in violation of 47 U.S.C. § 332(c)(3)(A).[12] According to Sprint's position, Sprint will not get reimbursed from the federal universal service fund for Lifeline discounts applied to anything other than its lowest-cost plan. Sprint provides no authority for this claim. Indeed, Sprint knew at the time it made this argument that reimbursement is made for a qualifying Lifeline customer regardless of the rate plan the customer has selected. While Sprint's case was pending in the United States District Court for the District of Kansas, the KCC sent an Information Request to the Universal

[12] 47 U.S.C. ¶ 332(c)(3)(A) states, in relevant part, "[N]o state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services."

Service Administrative Company (USAC). The KCC's Information Request and USAC's response are included here as Attachment 2. USAC's response to the Information Request clearly demonstrated that a carrier is not required to report the type of service plan the qualifying Lifeline customer has selected. In fact, USAC was asked if it had ever taken the position that providing Lifeline support for plans other than the ETC's lowest-rate plan is inconsistent with federal law or the FCC's regulation. USAC provided the following response:

> No. In fact the opposite is true; in its 2004 Lifeline and Link Up Order, the FCC emphasized that Lifeline customers should be permitted to purchase vertical services, such as Caller Id, Call Waiting and Three-way Calling.[13]

15. USAC's response to the KCC's Information Request is consistent with the FCC's rules. Section 54.407 Reimbursement for offering Lifeline provides:

> (a) universal service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier, based on the number of qualifying low-income consumers it serves, under administrative procedures determined by the Administrator.
> (b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer served. For each consumer receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amount described in §54.403(c). The eligible telecommunications carrier's universal service

[13] KCC Information Request, KCC Attachment 2, p. 2.

> support reimbursement shall not exceed the carrier's standard non-Lifeline rate.
>
> (c) In order to receive universal service support reimbursement, the eligible telecommunications carrier must keep accurate records of the revenues it forgoes in providing Lifeline in conformity with §54.401. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this Subpart.[14]

This rule contains no indication that reimbursement is limited to an ETC's lowest-cost plan. Likewise, 47 C.F.R. § 54.401(a) defines Lifeline as a "retail local service offering . . . available only to qualifying low-income consumers . . . for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amounts described in § 54.403; and . . . includes the services or functionalities enumerated in § 54.101(a)(1) through (a)(9)." Subsection (d) states that "Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart." It is unreasonable to assume that the FCC would limit reimbursement to discounts applied to a carrier's lowest-cost plan and not mention such limitation in its rules defining Lifeline and reimbursements for Lifeline.

16. Furthermore, Sprint's argument that it will not be reimbursed for Lifeline discounts applied to anything other than the lowest-cost plan is inconsistent with the manner in which other ETC's operate in Kansas. In the following comments addressing Lifeline customers' ability to avoid overage

[14] 47 C.F.R. § 54.407.

charges, RCC Minnesota, Inc. and USCOC of Nebraska/Kansas demonstrated that the Lifeline discount is available for a broad array of service plans:

> We note that the vast majority of customers, including low-income consumers, opt for post-paid wireless service on a contractual basis. Customers have the ability to choose from a wide variety of monthly rates, local calling areas, and usage allotments, in accordance with their budgets and calling patterns. Both RCC and USCOC encourage and assist consumers to find a rate plan that suits their usage so that they do not incur substantial overage charges. The many choices a consumer has with wireless rate plans are far more effective at enabling consumers to control their monthly telecommunications expenditures than a per minute blocking option would be[15]

It is reasonable to assume from these comments that RCC Minnesota, Inc. and USCOC of Nebraska/Kansas are reimbursed for the Lifeline discount regardless of the calling plan their qualified Lifeline customers select.

17. Other ETCs in Kansas allow qualifying Lifeline customers to choose the service plan that fits their needs and USAC is reimbursing carriers without regard to the rate plan selected. Sprints claim that the KCC's Lifeline Rule amounts to rate regulation is unfounded.

18. Finally, the KCC's Lifeline Rule was adopted after careful consideration in a proceeding opened for the purpose of establishing clear ETC criteria. The rule is consistent with federal statutes and the FCC's rules

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[15] *In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, Docket No. 06-GIMT-446-GIT, Joint Comments of RCC Minnesota, Inc. and USCOC of Nebraska/Kansas LLC Regarding Feasibility of Per-Minute Blocking for Lifeline Customers, ¶ 6 (December 20, 2006)

and policies. A state's authority to establish requirements for wireless ETC's was recently addressed in an opinion by the Tenth Circuit:

> We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law…. Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirement in state ETC proceedings, if they so choose.[16]

Conclusion

19. The KCC's Lifeline Rule is a proper exercise of the KCC's authority to establish criteria for ETC designation. Congress gave state commissions this discretion when it included them in the process of determining which carriers qualify for ETC designation. The rule adopted by the KCC that assures broad availability of Lifeline to Kansas consumers is consistent with Federal statutes and regulations. The FCC should reject Sprint's request to declare the rule preempted by federal law.

Respectfully Submitted,

/S/ Bret Lawson
Bret Lawson KS #14729

[16] *WWC Holding Co., Inc. V. Sopkin*, 488 F.3d 1262, 1273, 2007 WL 1600389, p. 5 (C.A.10(Colo.))(June 5, 2007).

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CERTIFICATE OF SERVICE

I, Bret Lawson, do hereby certify that I have caused the foregoing **COMMENTS OF THE CORPORATION COMMISSION OF THE STATE OF KANSAS** to be: 1) filed with the FCC via its Electronic Comment Filing System; 2) served via email on Ms. Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, at antoinette.stevens@fcc.gov; and, 3) served via email on the FCC's duplicating contractor, Best Copy and Printing, Inc., at FCC@bcpiweb.com.

/S/ Bret Lawson
BRET LAWSON

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